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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: 13-190520

DATE: November 22, 1977

MATTER OF: Auto-Skate Company

DIGEST:

GAO will not review protest which in essence involves agency's affirmative determination of awardee's responsibility. Moreover, protest is untimely.

Auto-Skate Company (Auto-Skate) has protested an award made to E. R. Mueller Tool & Manufacturing Company (Mueller) under General Services Administration (GSA) Solicitation No. 7PR-W-51806-3Z-7AV. Auto-Skate alleges that Mueller bid on the referenced solicitation using Auto-Skate's die and material located at Mueller's plant without Auto-Skate's permission and that Mueller, therefore, is not a "capable and responsible contractor."

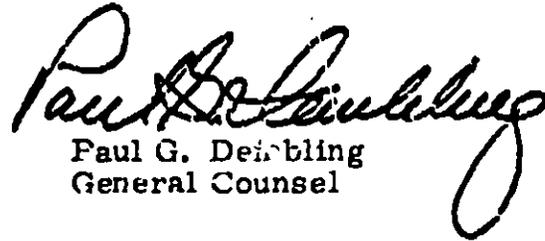
In essence Auto-Skate is protesting GSA's affirmative determination of Mueller's responsibility. Our Office will consider a protest concerning a determination of nonresponsibility in order to provide assurance to the protester against the arbitrary rejection of its bid. As a general rule, however, we do not consider protests concerning determinations that particular prospective contractors are responsible. Affirmative determinations of responsibility are largely a matter of subjective judgment within the sound discretion of contracting agency officials, who must bear the brunt of any difficulties experienced by reason of a contractor's inability to perform. We will review such determinations only in certain limited circumstances-- if there is a showing of fraud by the agency, or where it is alleged that definitive responsibility criteria set forth in the solicitation were not properly applied by the agency.

Since no showing of fraud or alleged misapplication of definitive responsibility criteria is involved in the present case, the protester's objection to the affirmative determination of responsibility will not be considered.

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Furthermore, Auto-Skate's protest was not filed with this Office until October 25, 1977, even though by letter dated August 5, 1977, GSA informed Auto-Skate that an award was being made to Mueller. Since Auto-Skate's protest was not filed within 10 days after the basis for protest was known, as required by our Bid Protest Procedures (4 C.F.R. § 20.2 (a)), the protest is therefore untimely.

Accordingly, the protest is dismissed.


Paul G. Deirbling
General Counsel